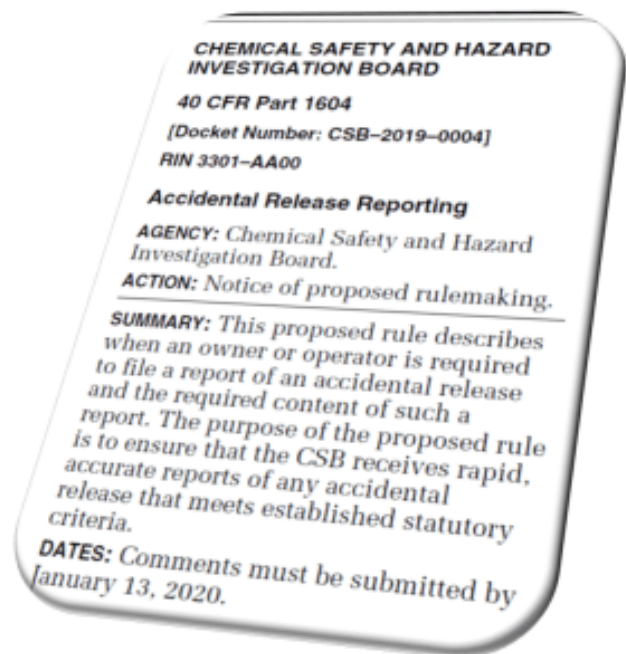


DECEMBER 14, 2019 | OSHA RULEMAKINGS & STANDARDS

CSB Issues Notice of Proposed Rulemaking for New Accidental Release Reporting Rule

By [Eric J. Conn](#) and [Beeta B. Lashkari](#)

Earlier this week, on December 12, 2019, the U.S. Chemical Safety and Hazard Investigation Board (CSB) issued a [Notice of Proposed Rulemaking](#) (NPRM) for its long-awaited chemical incident reporting rule, which sets out the circumstances when facility owners and operators are required to file reports with the CSB of accidental chemical releases and what must be communicated in the reports.



As stated in the NPRM, the purpose of the rule is "to ensure that the CSB receives rapid, accurate reports of any accidental release that meets established statutory criteria."

If promulgated, the rule would require owners and operators of stationary sources (chemical facilities) to report accidental releases that result in a fatality, serious injury, or substantial property damage to the CSB within four hours. The proposed rule also identifies the specific information required to be included in the accidental release

report:

1. A brief description of the accidental release;
2. Whether the release resulted in a fire, explosion, death, serious injury, or property damage;
3. The number of fatalities and/or serious injuries, and the estimated property damage at or outside the stationary source;
4. The name of the material involved;
5. The amount of the release; and
6. Whether the accidental release resulted in an evacuation order impacting members of the general public and other details associated with the evacuation.

Importantly, recognizing that some or all of this information may not be known within four hours of an accidental release, the CSB decided to include the qualifier — “if known” — for much of the information that would be required in the report.

If, however, the owner/operator submits a report to the National Response Center (NRC) regarding the same release, the reporting obligation to the CSB may be satisfied by simply submitting the NRC identification number to the CSB immediately following submission of the report to the NRC.

Because the CSB does not have its own enforcement authority, the proposed rule states that suspected violations of the reporting rule (i.e. failures to make a report, to make a timely report, or to provide complete and accurate information) will be referred to the Administrator of the Environmental Protection Agency (EPA) for appropriate enforcement action, and may result in administrative penalties in civil or criminal actions. The proposed rule does provide that owners and operators may revise and/or update information already reported to the CSB (or NRC) without penalty. 

Issuance of the CSB’s reporting rule has been a long time coming. Although the CSB did not become operational until 1998, its enabling legislation – the Clean Air Act Amendments (CAAA) – was enacted in 1990. That statute, from nearly thirty years ago, expressly required the CSB to issue a rule governing the reporting of accidental releases to the CSB.

Specifically, the CAAA required the CSB to “establish by regulation, requirements binding on persons for reporting accidental releases into the ambient air subject to the Board’s investigatory jurisdiction.”

Although the CSB submitted an Advanced Notice of Proposed Rulemaking for Chemical Release Reporting in 2009, that effort died on the vine. Accordingly, the CSB has never had its own reporting rule, relying instead on other sources to receive incident information. In February 2019, however, in a case brought by environmental activists, [*Air Alliance Houston, et al., v. U.S. Chemical and Safety Hazard Investigation Board, 17-cv-02608*](#)

(DDC2019) federal district judge of the U.S. District Court for the District of Columbia lambasted the CSB for what he characterized as “an egregious abdication of a statutory obligation” to promulgate reporting regulations under the Clean Air Act Amendments of 1990. The Judge dismissed the CSB’s arguments that the environmental groups lacked standing and held that the CSB did “unreasonably delay” action, having failed to promulgate regulations for nearly three decades.



Ultimately, the Judge ordered the CSB to promulgate a final reporting rule, as had been mandated by the CAAA decades ago, within 12 months of the district court’s ruling — i.e., by mid-February 2020.

The NPRM comes just a couple months before that deadline, and interested stakeholders have only a thirty-day window to submit comments about the proposed rule. Because the CSB is rushing to beat the district court’s deadline, we do not anticipate the CSB will grant any requests for an extension of that comment period. Accordingly, **comments should be submitted to CSB by January 13, 2020.**

If you have questions about the potential impact of the CSB’s new proposed accidental release reporting rule, contact [Eric J. Conn](#) or any of the attorneys in [Conn Maciel Carey’s national OSHA • Workplace Safety Practice Group](#).

If your company or trade association is interested in submitting comments about the proposed rule, Conn Maciel Carey’s [national OSHA • Workplace Safety Practice Group](#) is coordinating an [ad hoc coalition of employers to prepare a set of comments](#) to submit to the CSB. Our interest is to assemble a group of cross-sector organizations to support the preparation of comprehensive comments to address the CSB’s proposed rule, and to raise to the CSB our concerns with the expansiveness of its proposed definitions, how the rule should better align with existing reporting regulations, the impact that the rule might have on employers’ internal reporting policies, and the implications of this enforceable rule on CSB’s unique position as a non-enforcement agency, among other concerns. In light of the **January 13th** comment deadline, please contact [Eric J. Conn](#) (the Chair of Conn Maciel Carey’s OSHA practice) right away if you are interested in joining the coalition.

